

**CONTRACT #9**  
**RFS # 344.10-006**  
**FA # 09-25437**

**Finance and Administration**  
**Division of Mental Retardation**  
**Services**

**VENDOR:**  
**Columbus Medical Services**



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF MENTAL RETARDATION SERVICES  
ANDREW JACKSON BUILDING  
500 DEADERICK STREET, SUITE 1500  
NASHVILLE, TENNESSEE 37243

RECEIVED

APR 29 2009

FISCAL REVIEW

April 24, 2009

Jim White, Director  
Fiscal Review Committee  
8th Floor, Rachel Jackson Building  
Nashville, Tennessee 37243

Attention: Leni Chick

Re: Columbus Medical Services  
Contract Number FA-09-25437-00, Edison # 2794  
Request Amendment Review

Dear Mr. White:

The Division of Mental Retardation Services (DMRS) is submitting proposed Amendment 2 to Contract # FA-09-25437-00 with Columbus Medical Services LLC dba The Columbus Organization for review in accordance with requirements of the Fiscal Review Committee announced on September 18, 2008.

The contract, awarded through the State's RFP process, began on July 1, 2008. Amendment 1 increased funding for travel expenses.

Proposed Amendment 2 extends the contract term and increases funding in accordance to Section B.2. of the contract and includes language pertaining to the voluntary buyout program, which is currently required in all fee for service contracts.

A copy of the proposed amendment along with a copy of the base contract, prior amendment, and the *"Supplemental Documentation Required for Fiscal Review Committee"* form are enclosed. Please let me know if any additional information is required.

Your assistance for review of this proposed amendment is appreciated.

Sincerely,

Stephen H. Norris  
Deputy Commissioner

SHN:dd

Enclosures

**Supplemental Documentation Required for**

**Fiscal Review Committee**

**RECEIVED**

APR 29 2009

**FISCAL REVIEW**

*Contact Name:	Fred Hix, Assistant Commissioner	*Contact Phone:	253-6710
*Contract Number:	FA-09-25437-00 Edison # 2794	*RFS Number:	34410-00006
*Original Contract Begin Date:	July 1, 2008	*Current End Date:	June 30, 2009
Current Request Amendment Number: <i>(if applicable)</i>	2		
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2009		
*Department Submitting:	Finance and Administration		
*Division:	Mental Retardation Services		
*Date Submitted:	April 24, 2009		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Columbus Medical Services dba The Columbus Organization		
*Current Maximum Liability:	\$387,812.50		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2009			
\$387,812.50			
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2009	FY: 2010	FY:	FY:
\$387,812.50	\$154,800.00		
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:	State:	Federal:	
Interdepartmental:	\$387,812.50	Other:	

Supplemental Documentation Required for  
Fiscal Review Committee

If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
9/25/08 - Amendment 1		Increase maximum liability amount because additional funds were needed for travel expenses	
Method of Original Award: <i>(if applicable)</i>		RFP	

# C O N T R A C T   A M E N D M E N T   C O V E R

<b>RFS Tracking #</b>		<b>Edison Contract ID #</b>		<b>Amendment #</b>	
34410-00006		0000000000000000000000002794		2	
<b>Amendment Purpose</b>			<b>Delegated Authority Requisition ID # (Only if applicable)</b>		
Extend contract term, increase funding, and add language pertaining to the voluntary buyout program			<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>RECEIVED</b>  APR 29 2009 </div>		
<b>Contractor/Grantee</b>			<b>Contractor/Grantee FEIN or SSN</b>		
Columbus Medical Services, LLC, dba Columbus Organization			<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 75-2690132 <div style="border: 1px solid black; padding: 5px; display: inline-block; float: right;"> <b>FISCAL REVIEW</b> </div>		
<b>Begin Date</b>		<b>End Date</b>		<b>Subrecipient or Vendor</b>	
7/1/2008		6/30/2010		<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2009			\$387,812.50		\$387,812.50
2010			\$154,800.00		\$154,800.00
<b>TOTAL:</b>			\$542,612.50		\$542,612.50

— COMPLETE FOR AMENDMENTS —			<b>Procuring Agency Contact &amp; Telephone #</b>	
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Debra Dunn 253-6812	
2009	\$387,812.50		<b>Procuring Agency Budget Officer Approval</b> (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.)  Melinda Lanza 253-3166	
2010		\$154,800.00		
			<b>Speed Code</b>	<b>Account Code</b>
<b>TOTAL:</b>	\$387,812.50	\$154,800.00		

— OCR Use —	<b>Procurement Process Summary (FA or ED-type only)</b>  Contract was awarded through the RFP process.
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**AMENDMENT TWO  
TO FA-09-25437-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "ADC" and Columbus Medical Services, LLC, dba The Columbus Organization, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B.1. is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period commencing on July 1, 2008 and ending on June 30, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
2. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five hundred forty two thousand, six hundred twelve dollars and fifty cents (\$542,612.50). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4. shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.
3. The following provision is added as Contract Section E.19.:
  - E.19. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
    - a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
    - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

The revisions set forth herein shall be effective July 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

COLUMBUS MEDICAL SERVICES, LLC DBA THE COLUMBUS ORGANIZATION:

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CONTRACTOR SIGNATURE

DATE

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PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES,  
ARLINGTON DEVELOPMENTAL CENTER:

---

M. D. GOETZ, JR., COMMISSIONER

DATE

APPROVED:

---

COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

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COMPTROLLER OF THE TREASURY

DATE

# CONTRACT SUMMARY SHEET

# AMENDMENT

021008

RFS#		Contract #	
344-10-006		FA-09-25437-01	
State Agency		State Agency Division	
Department of Finance and Administration		Division of Mental Retardation Services	
Contractor Name		Contractor ID # (FEIN or SSN)	
Columbus Medical Services LLC dba Columbus Organization		The <b>C-</b> or <b>X</b> <b>V-</b> 75-2690132	

Service Description			
Behavior Analyst Services - Arlington Developmental Center			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor	CFRDA#
7/1/2008	6/30/2009	Vendor	

Mark Each TRUE Statement	
<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts

Allocation Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
344.10	1016 40611	84	11		
FY	State	Federal	Intra-departmental	Other	TOTAL Contract Amount
2009			\$ 387,812.50		\$ 387,812.50
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
TOTAL	\$ -	\$ -	\$ 387,812.50	\$ -	\$ 387,812.50

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone
FY	Base Contract & Prior Amendments	Amendment ONLY	Melinda Lanza 253-3166
2009	\$ 377,812.50	\$ 10,000.00	
TOTAL	\$ 377,812.50	\$ 10,000.00	
End Date	6/30/2009	6/30/2009	M.D. Gaetz, Jr. ST

Contractor Ownership (complete for ALL base contracts - N/A to amendments or delegated authorities)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other	

Contractor Selection Method (complete for ALL base contracts - N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation*	<input type="checkbox"/> Alternative Competitive Method*	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	<input type="checkbox"/> Other*	

Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)	
<div style="float: left; text-align: center;"> <p>RECEIVED</p> <p>2008 SEP 23 AM 10:11</p> </div> <div style="float: right; border: 1px solid black; padding: 5px; text-align: center;"> <p>OCR</p> <p>SEP 22 2008</p> <p>RECEIVED</p> </div>	



**AMENDMENT ONE  
TO FA-09-25437-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" and Columbus Medical Services, LLC dba The Columbus Organization hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:

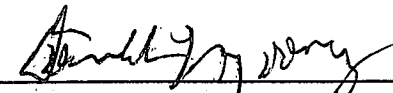
C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred eighty seven thousand, eight hundred twelve dollars and fifty cents (\$387,812.50). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4. shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective September 1, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF:**

**COLUMBUS MEDICAL SERVICES, LLC DBA THE COLUMBUS ORGANIZATION:**



CONTRACTOR SIGNATURE

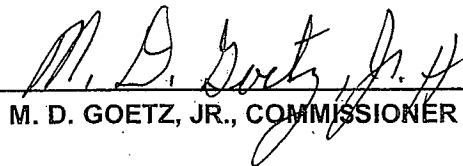
9/08/08

DATE

**DONALD MOONEY, EXECUTIVE VICE PRESIDENT**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES,  
ARLINGTON DEVELOPMENTAL CENTER:**



M. D. GOETZ, JR., COMMISSIONER

8-15-08

DATE

APPROVED:

M.D. Goetz, Jr. JP

9-22-08

M. D. GOETZ, JR. COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

John G. Morgan

9/25/08

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

# CONTRACT SUMMARY SHEET

021908

<b>R/S #</b>				<b>Contract #</b>			
344-10-006				FA-09-25437-00			
<b>State Agency</b>				<b>State Agency Division</b>			
Department of Finance and Administration				Division of Mental Retardation Services			
<b>Contractor Name</b>				<b>Contractor ID # (FEIN or SSN)</b>			
Columbus Medical Services LLC dba Columbus Organization				The <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 75-2690132			
<b>Service Description</b>							
Behavior Analyst Services - Arlington Developmental Center							
<b>Contract BEGIN Date</b>		<b>Contract END Date</b>		<b>Subrecipient or Vendor?</b>		<b>CFDA #</b>	
7/1/2008		6/30/2009		Vendor			
<b>Mark Each TRUE Statement</b>							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>		
344.10	10011	84	11				
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>		
2009			\$ 377,812.50		\$ 377,812.50		
					\$ -		
					\$ -		
					\$ -		
					\$ -		
					\$ -		
<b>TOTAL</b>	\$ -	\$ -	\$ 377,812.50	\$ -	\$ 377,812.50		
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>				<b>State Agency Fiscal Contact &amp; Telephone #</b>			
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Melinda Lanza 253-3166				
			<b>State Agency Budget Officer Approval</b>				
			Melinda Lanza 6-13-08				
			<b>Funding Certification</b> (certification required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
<b>TOTAL</b>	\$ -	\$ -					
<b>End Date</b>			JUL 01 2008				
<b>Contractor Ownership</b> (complete for ALL base contracts — N/A to amendments or delegated authorities)							
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government			
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other			
<b>Contractor Selection Method</b> (complete for ALL base contracts — N/A to amendments or delegated authorities)							
<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation*	<input type="checkbox"/> Alternative Competitive Method*					
<input type="checkbox"/> Non-Competitive Negotiation*	<input type="checkbox"/> Negotiation w/ Government (ID, GC, GU)	<input type="checkbox"/> Other *					
<b>Procurement Process Summary</b> (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)							

2008 JUL -7 PM 3:27

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**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES  
ARLINGTON DEVELOPMENTAL CENTER  
AND**

**COLUMBUS MEDICAL SERVICES, LLC DBA THE COLUMBUS ORGANIZATION**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, Arlington Developmental Center (ADC), hereinafter referred to as the "State" or "ADC" and Columbus Medical Services, LLC dba The Columbus Organization, hereinafter referred to as the "Contractor," is for the provision of Behavioral Analysts, as further defined in the "SCOPE OF SERVICES."

The Contractor is a limited liability company.

Contractor Federal Employer Identification or Social Security Number: 75-2690132

Contractor Place of Incorporation or Organization: Delaware

**A. SCOPE OF SERVICES:**

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. The Contractor shall provide one (1) full-time equivalent position for up to one thousand, nine hundred fifty (1,950) hours annually to serve as a Chief Behavioral Analyst and two (2) full-time equivalent positions for up to three thousand, nine hundred (3,900) hours annually to serve as a Staff Behavior Analyst for ADC.

a. This is an estimated number of contract personnel to be used as needed. The State shall not be obligated to use any particular minimum number of contract personnel.

b. Contract personnel must be able to work thirty-seven and one-half (37.5) hours of service per week and be available on-call to respond to behavioral crises for individuals supported as directed by the ADC Chief Officer (or his/her designee).

A.3. Minimum educational, training, and experience requirements:

a. Contract personnel serving as the ADC Chief Behavior Analyst must:

(1) Possess a Doctoral Degree in applied behavior analysis (or a closely related area) from an accredited college or university, OR have completed the majority of the requirements for a Doctoral Degree in behavioral analysis (or a closely related area).

(2) Possess and maintain a credential(s) or a license(s) that permit the practice of behavior analysis as determined by the state of Tennessee and the Division of Mental Retardation Services (DMRS). This includes a license as granted by the TN Health Related Boards, such as Licensed Practicing Psychologist, Senior Psychological Examiner, OR board certification as a behavior analyst through the Behavior Analyst Certification Board®.

(3) Have at least one year of clinical experience involving the clinical application of behavior analysis to persons with developmental disabilities and challenging behavior and one year managerial experience, including clinical supervision.

- b. Contract personnel serving as Staff Behavior Analyst must:
  - (1) Possess at least a Master's degree in applied behavior analysis (or a closely related area) from an accredited college or university;
  - (2) AND Possess and maintain a credential(s) or a license(s) that permits the practice of behavior analysis as determined by the state of Tennessee and DMRS OR be approved as eligible to take the required credentialing exam. This includes a license as granted by the TN Health Related Boards, such as Licensed Practicing Psychologist, Senior Psychological Examiner, OR Board Certification as a behavior analyst through the Behavior Analyst Certification Board®.
  - (3) AND Have at least six months clinical experience involving the application of behavior analysis to persons with developmental disabilities.

A.4. The Contract Chief Ph.D. Behavior Analyst may be responsible for providing the following services including but not limited to:

- a. Ensure compliance related to behavioral analysis of the Federal Remedial Order, No. 92-2062-ML/A, and all ADC policies.
- b. Chair the ADC Behavior Management Committee (BMC).
- c. Conduct clinical reviews of all "critical" (high risk) citizens.
- d. Review all restraint and emergency psychotropic medication use.
- e. Review all reports of abuse, neglect, and mistreatment related to behavior.
- f. Provide clinical supervision for all staff behavior analysts.
- g. Approve all behavior analysts hired and evaluate each semi-annually.
- h. Coordinate and direct the activities of the expert consultant.

A.5. The Contract master-level Behavior Analyst staff, under the direction of the Chief Behavior Analyst, may be responsible for providing the following services including but not limited to:

- a. Conduct functional assessments, including functional analysis, with all citizens in the assigned home who display challenging behaviors.
- b. Conduct either indirect (e.g., Reinforcer Assessment for Individuals with Severe Disabilities (RAISD)) or direct stimulus preference assessments (e.g., Multiple Stimulus without Replacement format) for each citizen requiring behavioral services as part of the overall assessment process.
- c. Develop a Behavior Development Program (BDP) for all assigned citizens who present challenging behaviors. This BDP will be based upon the results of the functional assessment and will contain procedures for reinforcing a functionally equivalent replacement behavior(s) and limiting reinforcement for the display of behaviors targeted for reduction.
- d. Obtain all required approvals and consents (e.g., Inter-disciplinary Team (IDT), family/guardian, Behavior Management Committee (BMC), Human Rights Committee (HRC) consistent with ADC policy prior to implementing a BDP.

- e. Ensure that all staff members who will be responsible for a particular citizen are trained on that citizen's BDP procedures using a competency-based training format.
- f. Regularly monitor implementation of the BDP for each assigned citizen as specified in ADC policy. Monitoring will consist of directly observing staff members conducting treatment sessions (e.g., functional communication training, compliance training) and assessing reliability of procedural implementation, replacement behavior data collection, and target behavior data collection. The Behavior Analyst may also conduct information checks to assess retention of BDP components.
- g. Ensure that all target and replacement behavior data are entered weekly into the State's existing graphing software program. Graphed treatment data will be presented as part of each monthly review and BMC review.
- h. Write regular reviews of treatment progress to present to the IDT including monthly behavior reviews and Individual Support Plan (ISP) reviews. Other reports may be required including transition recommendations, risk review recommendations, and serious incident/injury reports.
- i. Attend all IDT meetings (e.g., monthly review, psychotropic medication review, ISP, transition meetings) related to treatment progress for citizens with a BDP.
- j. Renew approvals for all BDP's by presenting a report of treatment progress to the BMC as delineated in ADC policy.
- k. Meet regularly with the Chief Behavior Analyst to discuss critical cases, obtain other consultation, or as requested by the Chief Behavior Analyst.
- l. Meet with the expert consultant in applied behavior analysis on a regular basis to review difficult cases, clinical research projects, or as requested by the Chief Behavior Analyst.
- m. Assist direct care staff in resolving crisis situations including episodes of severe aggression, self-injury or property destruction.
- n. Assume on-call duties for one-week periods on a rotating basis.

A.6. The Contractor shall not provide any services pursuant to this Contract until the following conditions are met:

- a. Contract personnel have been screened and deemed qualified and suitable by the Contractor in accordance with the provisions of this Contract.
- b. ADC Chief Officer (or his/her designee) has reviewed the credentials of contract personnel and, if deemed necessary, has personally interviewed contract personnel.
- c. The Contractor shall conduct an investigation to ensure that contract personnel meet all of the State qualifications and can otherwise perform the duties as specified in this Contract. Contract personnel must be experienced, certified, and/or licensed as required by the State.
- d. The Contractor shall provide all applicable and verifiable documentation as to education and experience, such as transcripts and curriculum vitae, licenses and certificates, personal and professional references to the State.
- e. The Contractor will perform a background check, including fingerprinting, of all staff who will perform services under this contract and submit the results of the background check prior to the staff reporting to ADC. The background check must be equal to the

background check conducted for State employees and must be done at the expense of the Contractor.

- f. The Contractor will require all staff that will perform services under this contract to have a physical examination prior to the staff reporting to ADC. The examination shall include a test for diseases that may be communicated to the individuals who live at ADC. Documentation of the physical and the results of any tests for communicable diseases must be provided to ADC. Tests for communicable diseases required for State employees (including contractual) must be repeated annually and documentation of such annual updates shall be provided to ADC/West TN Regional Office (WTRO).
- A.7. The Contractor's staff must demonstrate proficiency in the English language effectively through written and verbal means. In accordance with Commissioner's Regulations, an applicant for licensure/certification whose application is based on credit granted for completion of courses of study in a country where English is not the principal language spoken must demonstrate proficiency in English by passing either an acceptable examination in English proficiency or a licensing examination given in English (for example, the National Board for Certification in Occupational Therapy, Inc. certification examination) which is acceptable to the State.
- A.8. Contract personnel must not have been convicted or have current charges outstanding which would constitute a felony or misdemeanor conviction in Tennessee.
- A.9. The Contractor shall coordinate all personal interviews between contract personnel and representatives of Arlington Developmental Center. The Contractor will be responsible for all costs relating to interviews and relocation.
- A.10. The Contractor warrants that no contract personnel who are former employees of the State of Tennessee shall be referred within six (6) months of such employees' final separation from employment with the State of Tennessee. Further, no former employees shall be referred who were dismissed for cause, with, or without cause during a probationary period or resigned not in good standing from employment with the State of Tennessee.
- A.11. Contract personnel shall not be deemed for any purpose to be employees of the State. With respect to contract personnel, the Contractor shall be responsible for payroll, benefits, worker's compensation, withholding of all State and Federal taxes, and depositing of same at the appropriate times and places.
- A.12. The State shall be the sole judge of the Contractor's performance. The Contractor agrees to remove (at its own expense) any contract personnel judged by the State as not providing satisfactory services. The Contractor further agrees not to charge the State for any services performed which the State designates as being unacceptable. The Contractor further agrees not to remove or transfer any contract personnel who are providing satisfactory services without the prior written approval of the State during the term of this Contract.
- A.13. The Contractor agrees that all services will meet or surpass standards for quality of services as specified in the following standards and laws:
  - a. Title XIX, Medical Regulations for Intermediate Care Facilities for Persons with Mental Retardation;
  - b. The Federal Remedial Order, Civil Action No. 92-2062-ML/A, entered by the United States District Court for the Western District of Tennessee for the Western Division in United States of America v. State of Tennessee, et al, relating to Arlington Developmental Center and The Settlement Agreement entered by the United States District Court for the Middle District of Tennessee in People First v. Clover Bottom, et al, relating to Clover Bottom Developmental Center, Greene Valley Developmental Center, and Nat T. Winston Developmental Center;

- c. DMRS Policies, Procedures, and Guidelines;
- d. Title 33, Tennessee Code Annotated; and
- e. Policies and Information Bulletins developed by the Division of Mental Retardation Services.

- A.14. The State retains full authority for citizen/individual care at all times. The State's retention for full authority for citizen/individual cares at all times does not diminish the Contractor's responsibility for services provided.
- A.15. The Contractor agrees that the on-site daily accountability of contract staff performance shall be through the direct supervisory reporting of the Chief Behavior Analyst to ADC Chief Officer and/or his designee.
- A.16. In the event that the State employees of a department are required to sign in and out, the Contractor's staff performing similar duties will also be required to sign in and out. This requirement may also be made without regard to the requirements of the State employee staff. The appropriate department head or designated State staff member will verify and approve each timesheet, and if applicable, compare the sign in/out sheet. The Contractor will only be paid for the actual hours worked and verified by the State.
- A.17. The Contractor, not the State, is responsible for all expenses incurred by professionals for licensure, certification, continuing education, etc.
- A.18. The State shall provide workstations, computers, and access to the State Network to Contractor's staff providing services under this Contract. The Contractor shall ensure that its staff adheres to State computer use rules and regulations.
- A.19. The State reserves the right, during the term of this Contract, to refuse, for whatever reason, any individual proposed by the Contractor for a position.
- A.20. If ADC respective department head or higher authority determines that a Contractor's employee is incompetent, has engaged in misconduct, or has been negligent, ADC has the right to require the contract staff to leave the premises. If so, the Contractor will be contacted immediately. The Contractor will be responsible for the replacement of the contract employee within the guidelines as specified in Attachment 1, Liquidated Damages, to this contract.
- A.21. Contractor Staff may be required to use personal vehicles and/or may ride with State employees who are going to the same location in providing services to individuals who are transitioning into the West Tennessee community area.

**B. CONTRACT TERM:**

- B.1. This Contract shall be effective for the period commencing on July 1, 2008 and ending on June 30, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.



**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred seventy seven thousand, eight hundred twelve dollars and fifty cents (\$377,812.50). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4. shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)				
	Year 1 7/01/08 - 6/30/09	*Year 2 7/01/09 - 6/30/10	*Year 3 7/01/10 - 6/30/11	*Year 4 7/01/11 - 6/30/12	*Year 5 7/01/12 - 6/30/13
Chief Behavior Analyst (Ph.D.) Services - per hour	\$79.39	\$79.39	\$81.78	\$83.41	\$85.08
Staff Behavioral Analyst Services - per hour	\$57.18	\$57.18	\$58.89	\$60.07	\$61.27

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
  - d. All hours will be reimbursed at regular hourly rates. No hours will be reimbursed at any overtime rates. There will no reimbursement for non-work hours.
  - e. \* Funding for Year 2, Year 3, Year 4, and Year 5 of this contract shall be contingent upon an approved amendment.
- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than semi-monthly, with all necessary supporting documentation, to:

Vickie Connell, West TN Region Contract Officer  
Department of Finance and Administration  
Division of Mental Retardation Services  
West Tennessee Regional Office  
P.O. Box 949  
11437 Milton Wilson Road  
Arlington, Tennessee 38002

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Finance and Administration, Division of Mental Retardation Services, Arlington Developmental Center
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service Description for each service invoiced;
  - ii. Number of Units, Increments, or Milestones of each service invoiced;
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
  - iv. Amount Due by Service;
  - v. Travel Compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations;" and
  - vi. A timesheet for each Contractor employee.
  - vii. Total Amount Due for the invoice period.

- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as

identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 2, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or

regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of

the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Stephen H. Norris, Deputy Commissioner  
Department of Finance and Administration  
Division of Mental Retardation Services  
500 Deaderick Street  
Nashville, Tennessee 37243  
stephen.norris@state.tn.us  
Telephone # 615-532-6538  
FAX # 615-532-9940

Vickie Connell, West TN Region Contract Officer  
Department of Finance and Administration  
Division of Mental Retardation Services  
West TN Regional Office  
P.O. Box 949  
11437 Milton Wilson Road  
Arlington, Tennessee 38002  
vickie.connell@state.tn.us  
Telephone # 901-745-7760  
FAX # 901-745-7894

The Contractor:

Donald Mooney, Executive Vice President  
Columbus Medical Services LLC dba The Columbus Organization  
1012 West Ninth Avenue  
King of Prussia, Pennsylvania 19406  
dmooney@columbusorg.com  
Telephone # 800-229-5116  
FAX # 888-379-2524

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the

Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
  - b. All Clarifications and addenda made to the Contractor's Proposal
  - c. The Request for Proposal and its associated amendments
  - d. Technical Specifications provided to the Contractor
  - e. The Contractor's Proposal
- In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.
- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or



imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.12. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.13. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP - 344.10-006 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

- E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 1 and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any

amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

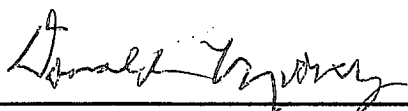
- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor

may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.16. Books, Documents, Papers, and Records Subject to review by State and Federal Government. The State of Tennessee Department of Finance and Administration Bureau of TennCare, the State of Tennessee Department of Finance and Administration Division of Mental Retardation Services, the State of Tennessee Comptroller of the Treasury, the United States Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examination, excerpts and transcriptions.
- E.17. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons for performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.18. Drug Testing. Contractor staff will be subject to periodic random drug tests in accordance with State and ADC policy.

IN WITNESS WHEREOF:

COLUMBUS MEDICAL SERVICES, LLC DBA THE COLUMBUS ORGANIZATION:



6/25/2008

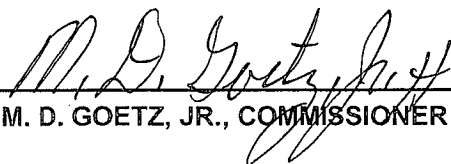
CONTRACTOR SIGNATURE

DATE

DONALD MOONEY, EXECUTIVE VICE PRESIDENT

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF MENTAL RETARDATION SERVICES,  
ARLINGTON DEVELOPMENTAL CENTER:



M. D. GOETZ, JR., COMMISSIONER

6-13-08

DATE

APPROVED:

*M. D. Goetz Jr /sc*

*7/7/08*

M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

NOT APPLICABLE

DEBORAH E. STORY, COMMISSIONER  
DEPARTMENT OF HUMAN RESOURCES

DATE

*John G. Morgan*

*7/8/08*

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

## LIQUIDATED DAMAGES

DELIVERABLES	LIQUIDATED DAMAGES PER BUSINESS DAY
Failure to fill positions with qualified individuals to begin work on the contract effective date and for the term of the contract as requested by the ADC Chief Officer.	\$10,000 for each position that remains unfilled for more than 30 consecutive days.

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Columbus Medical Services, LLC dba The Columbus Organization
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	75-2690132

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**